IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11703 of 2004
with
Special Civil Application No. 12609 of 2004
with
Special Civil Applications No. 12213 to 12216 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANJUMANE ISLAM
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 11703 of 2004
MR AK CLERK for Petitioner No. 1-5
Mr. Dipen A. Desai, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH
Date of decision: 06/10/2004

COMMON ORAL JUDGEMENT

Rule. Shri Dipen A. Desai, learned AGP waives service of Rule on behalf of the State in all these petitions.

2. In all these petitions, the petitioners have challenged the legality and validity of the order passed by the District Education Officer, Ahmedabad City, Ahmedabad dated 18th August 2004 and also by the amended order dated 1st September 2004 by which the District Education Officer has passed an order of recovery of salary paid to teaching as well as non-teaching staff who are continued by the management after the age of 58 years and also withholding of salary from August 2004.

3. Shri Abhilash Clerk, learned advocate appearing for the petitioners has submitted that before passing the impugned order no opportunity of hearing was given to the petitioners nor any show cause notice has been issued and in fact those teaching as well as non-teaching staff are continued after obtaining necessary permission/approval from the District Education Officer and therefore it was not open for the respondent No.1 to pass the impugned order.

4. In response to the notice issued by this Court, Shri Dipen Desai, learned AGP appearing on behalf of the District Education Officer has submitted that though exemption is granted to continue those teaching and non-teaching staff beyond the age of 58 years there is no condition and/or order that the State Government will pay the salary and grant. However, without entering into the same he has submitted that in view of the fact that the impugned orders are passed without giving opportunity to the petitioners, the District Education Officer, Ahmedabad City, Ahmedabad, will give opportunity of hearing to the petitioners and pass an appropriate and reasoned speaking order. At this stage, Shri Abhilash Clerk, learned advocate appearing for the petitioners had submitted that these petitions be treated as replies to the show cause notice. Shri Dipen Desai, learned AGP has submitted that a show cause notice will be issued upon the petitioners and on receipt of the same the petitioners may file their reply. In view of the aforesaid facts and circumstances of the case, the impugned orders are hereby quashed and set aside. It is directed that the District Education Officer may issue show cause notice upon the petitioners within a period of two weeks from today and on receipt of the same the petitioners may file their detailed reply to the show cause notices within the period of two weeks thereafter and thereafter the District Education Officer, Ahmedabad City is directed to consider the same pass a speaking and reasoned order after giving opportunity of hearing to the concerned petitioners. It is further directed that if

any decision is adverse to the petitioners the same shall not be implemented for a period of 10 days from the date of communication by Registered Post with Acknowledgment Due. In view of the fact that the impugned orders are set aside, it goes without saying that till a fresh decision is taken, the respondent District Education Officer will make the payment of salary to the concerned teaching as well as non-teaching staff. Rule is made absolute to the aforesaid extent in each of the petitions.

rmr. [M.R. Shah, J.]